

ASSEMBLY BILL

No. 2195

Introduced by Assembly Member Corbett

February 20, 2002

An act to amend Sections 230 and 230.1 of the Labor Code, relating to workplace protections.

LEGISLATIVE COUNSEL'S DIGEST

AB 2195, as introduced, Corbett. Workplace protections.

Existing law provides protections to victims of domestic violence and prohibits employers from taking adverse employment action against victims of domestic violence who take time off from work to attend to issues arising as result of the domestic violence, as long as the employee complies with certain conditions. Existing law provides that employers who violate these provisions are guilty of a misdemeanor.

This bill, by extending those provisions to victims of sexual assault, as defined, would impose a state-mandated local program.

This bill would also make technical, nonsubstantive changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 230 of the Labor Code is amended to read:

230. (a) ~~No employer shall~~ *An employer may not* discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is required to serve.

(b) ~~No employer shall~~ *An employer may not* discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(c) ~~No employer shall~~ *An employer may not* discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence ~~as defined in Section 6211 of the Family Code~~ *or a victim of sexual assault* for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of a ~~domestic violence~~ *the victim* or his or her child.

(d) (1) As a condition of taking time off for a purpose set forth in subdivision (c), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence *or sexual assault*.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence *or sexual assault*, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a medical professional, domestic violence advocate *or advocate for victims of sexual assault*, health care provider, or counselor that the employee was undergoing

1 treatment for physical or mental injuries or abuse resulting in
2 victimization from an act of domestic violence *or sexual assault*.

3 (3) To the extent allowed by law, ~~employers~~ *the employer* shall
4 maintain the confidentiality of any employee requesting leave
5 under subdivision (c).

6 (e) Any employee who is discharged, threatened with
7 discharge, demoted, suspended, or in any other manner
8 discriminated or retaliated against in the terms and conditions of
9 employment by his or her employer because the employee has
10 taken time off for a purpose set forth in subdivision (a), (b), or (c)
11 shall be entitled to reinstatement and reimbursement for lost wages
12 and work benefits caused by the acts of the employer. Any
13 employer who willfully refuses to rehire, promote, or otherwise
14 restore an employee or former employee who has been determined
15 to be eligible for rehiring or promotion by a grievance procedure
16 or hearing authorized by law is guilty of a misdemeanor.

17 (f) (1) Any employee who is discharged, threatened with
18 discharge, demoted, suspended, or in any other manner
19 discriminated or retaliated against in the terms and conditions of
20 employment by his or her employer because the employee has
21 exercised his or her rights as set forth in subdivision (a), (b), or (c)
22 may file a complaint with the Division of Labor Standards
23 Enforcement of the Department of Industrial Relations pursuant
24 to Section 98.7.

25 (2) Notwithstanding any time limitation in Section 98.7, an
26 employee filing a complaint with the division based upon a
27 violation of subdivision (c) shall have one year from the date of
28 occurrence of the violation to file his or her complaint.

29 (g) An employee may use vacation, personal leave, or
30 compensatory time off that is otherwise available to the employee
31 under the applicable terms of employment, unless otherwise
32 provided by a collective bargaining agreement, for time taken off
33 for a purpose specified in subdivision (a), (b), or (c). The
34 entitlement of any employee under this section shall not be
35 diminished by any collective bargaining agreement term or
36 condition.

37 (h) *For purposes of this section:*

38 (1) *“Domestic violence” means any of the types of abuse set*
39 *forth in Section 6211 of the Family Code, as amended.*

(2) “*Sexual assault*” means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

SEC. 2. Section 230.1 of the Labor Code is amended to read:

230.1. (a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer with 25 or more employees may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence ~~as defined in Section 6211 of the Family Code~~ or a victim of sexual assault for taking time off from work to attend to any of the following:

(1) To seek medical attention for injuries caused by domestic violence or sexual assault.

(2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault.

(3) To obtain psychological counseling related to an experience of domestic violence or sexual assault.

(4) To participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee’s intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence or sexual assault.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing

1 treatment for physical or mental injuries or abuse resulting in
2 victimization from an act of domestic violence *or sexual assault*.

3 (3) To the extent allowed by law, employers shall maintain the
4 confidentiality of any employee requesting leave under
5 subdivision (a).

6 (c) Any employee who is discharged, threatened with
7 discharge, demoted, suspended, or in any other manner
8 discriminated or retaliated against in the terms and conditions of
9 employment by his or her employer because the employee has
10 taken time off for a purpose set forth in subdivision (a) ~~shall be~~ *is*
11 entitled to reinstatement and reimbursement for lost wages and
12 work benefits caused by the acts of the employer. Any employer
13 who willfully refuses to rehire, promote, or otherwise restore an
14 employee or former employee who has been determined to be
15 eligible for rehiring or promotion by a grievance procedure or
16 hearing authorized by law is guilty of a misdemeanor.

17 (d) (1) Any employee who is discharged, threatened with
18 discharge, demoted, suspended, or in any other manner
19 discriminated or retaliated against in the terms and conditions of
20 employment by his or her employer because the employee has
21 exercised his or her rights as set forth in subdivision (a) may file
22 a complaint with the Division of Labor Standards Enforcement of
23 the Department of Industrial Relations pursuant to Section 98.7.

24 (2) Notwithstanding any time limitation in Section 98.7, an
25 employee filing a complaint with the division based upon a
26 violation of subdivision (a) shall have one year from the date of
27 occurrence of the violation to file his or her complaint.

28 (e) An employee may use vacation, personal leave, or
29 compensatory time off that is otherwise available to the employee
30 under the applicable terms of employment, unless otherwise
31 provided by a collective bargaining agreement, for time taken off
32 for a purpose specified in subdivision (a). The entitlement of any
33 employee under this section shall not be diminished by any
34 collective bargaining agreement term or condition.

35 (f) This section does not create a right for an employee to take
36 unpaid leave that exceeds the unpaid leave time allowed under, or
37 is in addition to the unpaid leave time permitted by, the federal
38 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et
39 seq.).

40 (g) *For purposes of this section:*

1 (1) “Domestic violence” means any of the types of abuse set
2 forth in Section 6211 of the Family Code, as amended.

3 (2) “Sexual assault” means any of the crimes set forth in
4 Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j,
5 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the
6 Penal Code, as amended.

7 SEC. 3. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

